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SENATE BILL 1176

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; CAPPING AN EMPLOYER'S CONTRIBUTION RATE AT FIVE AND FOUR-TENTHS PERCENT OF ANNUAL PAYROLL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11, as amended by Laws 2005, Chapter 3, Section 4 and further amended by Laws 2005, Chapter 255, Section 2) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE--CAP ESTABLISHED.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing

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1 in the Unemployment Compensation Law shall be construed to
2 grant an employer or individuals in the employer's service
3 prior claims or rights to the amounts paid by the employer into
4 the fund.

5 B. Benefits paid to an individual shall be charged
6 against the accounts of the individual's base-period employers
7 on a pro rata basis according to the proportion of the
8 individual's total base-period wages received from each
9 employer, except that no benefits paid to a claimant as
10 extended benefits under the provisions of Section 51-1-48 NMSA
11 1978 shall be charged to the account of any base-period
12 employer who is not on a reimbursable basis and who is not a
13 governmental entity and, except as the secretary shall by rule
14 prescribe otherwise, in the case of benefits paid to an
15 individual who:

16 (1) left the employ of a base-period employer
17 who is not on a reimbursable basis voluntarily without good
18 cause in connection with the individual's employment;

19 (2) was discharged from the employment of a
20 base-period employer who is not on a reimbursable basis for
21 misconduct connected with the individual's employment;

22 (3) is employed part time by a base-period
23 employer who is not on a reimbursable basis and who continues
24 to furnish the individual the same part-time work while the
25 individual is separated from full-time work for a

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1 nondisqualifying reason; or

2 (4) received benefits based upon wages earned
3 from a base-period employer who is not on a reimbursable basis
4 while attending approved training or school on a full-time
5 basis under the provisions of Subsection E of Section 51-1-5
6 NMSA 1978.

7 C. The division shall not charge a contributing or
8 reimbursing base-period employer's account with any portion of
9 benefit amounts that the division can bill to or recover from
10 the federal government as either regular or extended benefits.

11 D. The division shall not charge a contributing
12 base-period employer's account with any portion of benefits
13 paid to an individual for dependent allowance or because the
14 individual to whom benefits are paid:

15 (1) separated from employment due to domestic
16 abuse; or

17 (2) is enrolled in approved training or is
18 attending school on a full-time basis.

19 E. All contributions to the fund shall be pooled
20 and available to pay benefits to any individual entitled
21 thereto, irrespective of the source of such contributions. The
22 standard rate of contributions payable by each employer shall
23 be five and four-tenths percent and no contribution above that
24 rate shall be charged.

25 F. An employer's rate shall not be varied from the

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1 standard rate for any calendar year, [~~unless, as of the~~
2 ~~computation date for that year, the employer's account has been~~
3 ~~chargeable with benefits throughout the preceding thirty-six~~
4 ~~months~~] except that:

5 (1) the provisions of this subsection shall
6 not apply to governmental entities;

7 (2) beginning January 1, 2005, any employing
8 unit that becomes an employer subject to the payment of
9 contributions under the Unemployment Compensation Law or has
10 been an employer subject to the payment of contributions at a
11 standard rate of two percent through December 31, 2004, shall
12 be subject to the payment of contributions at the reduced rate
13 of two percent until, as of the computation date of a
14 particular year, the employer's account has been chargeable
15 with benefits throughout the preceding thirty-six months;

16 (3) any individual, type of organization or
17 employing unit that acquires all or part of the trade or
18 business of another employing unit, pursuant to Paragraphs (2)
19 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
20 a reduced rate of contribution shall be entitled to the
21 transfer of the reduced rate to the extent permitted under
22 Subsection H of this section;

23 (4) an employer that, at the time of
24 establishing an account, is in business in another state or
25 states and that is not currently doing business in New Mexico

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1 may elect, pursuant to Paragraph (5) of this subsection, to
2 receive a beginning contribution rate of two percent or a
3 contribution rate based on the current contribution rate
4 schedule in Paragraph (4) of Subsection I of this section,
5 whichever is lower, if:

6 (a) the employer has been in operation
7 in the other state or states for at least three years
8 immediately preceding the date of becoming a liable employer in
9 New Mexico, throughout which an individual in the employer's
10 employ could have received benefits if eligible; and

11 (b) the employer provides the
12 authenticated account history as defined by rule of the
13 secretary from information accumulated from operations in the
14 other state or all the other states to compute a current New
15 Mexico rate; and

16 (5) the election authorized in Paragraph (4)
17 of this subsection shall be made in writing within thirty days
18 after receiving notice of New Mexico liability and, if not made
19 timely, a two percent rate will be assigned; if the election is
20 made timely, the employer's account will receive the lesser of
21 the computed rate determined by the condition of the account
22 for the computation date immediately preceding the New Mexico
23 liable date, or the reduced rate of two percent; rates for
24 subsequent years will be determined by the condition of the
25 account for the computation date.

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1 G. The secretary shall, for the year 1942 and for
2 each calendar year thereafter, classify employers in accordance
3 with their actual experience in the payment of contributions
4 and with respect to benefits charged against their accounts,
5 with a view of fixing such contribution rates as will reflect
6 such benefit experience. An employer's rate for any calendar
7 year shall be determined on the basis of the employer's record
8 and the condition of the fund as of the computation date for
9 such calendar year, provided that an employer's contribution
10 rate shall not exceed five and four-tenths percent of annual
11 payroll.

12 An employer may make voluntary payments in addition to the
13 contributions required under the Unemployment Compensation Law,
14 which shall be credited to the employer's account in accordance
15 with department rule. The voluntary payments shall be included
16 in the employer's account as of the employer's most recent
17 computation date if they are made on or before the following
18 March 1. Voluntary payments when accepted from an employer
19 shall not be refunded in whole or in part.

20 H. In the case of a transfer of an employing
21 enterprise, notwithstanding any other provision of law, the
22 experience history of the transferred enterprise as provided in
23 Subsection G of this section shall be transferred from the
24 predecessor employer to the successor under the following
25 conditions and in accordance with the applicable rules of the

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1 secretary:

2 (1) as used in this subsection:

3 (a) "employing enterprise" means a
4 business activity engaged in by a contributing employing unit
5 in which one or more persons have been employed within the
6 current or the three preceding calendar quarters. An
7 "employing enterprise" includes the employer's workforce;

8 (b) "predecessor" means the owner and
9 operator of an employing enterprise immediately prior to the
10 transfer of such enterprise;

11 (c) "successor" means any person that
12 acquires an employing enterprise and continues to operate such
13 business entity;

14 (d) "experience history" means the
15 experience rating record and reserve account, including the
16 actual contributions, benefit charges and payroll experience of
17 the employing enterprise;

18 (e) "common ownership" means that two or
19 more businesses are substantially owned, managed or controlled
20 by the same person or persons;

21 (f) "knowingly" means having actual
22 knowledge of or acting with deliberate ignorance of or reckless
23 disregard for the prohibition involved; and

24 (g) "violates or attempts to violate"
25 includes an intent to evade, a misrepresentation or a willful

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1 nondisclosure;

2 (2) except as otherwise provided in this
3 subsection, for the purpose of this subsection, two or more
4 employers who are parties to or the subject of any transaction
5 involving the transfer of an employing enterprise shall be
6 deemed to be a single employer and the experience history of
7 the employing enterprise shall be transferred to the successor
8 employer if the successor employer has acquired by the
9 transaction all of the business enterprises of the predecessor;
10 provided that:

11 (a) all contributions, interest and
12 penalties due from the predecessor employer have been paid;

13 (b) notice of the transfer has been
14 given in accordance with the rules of the secretary during the
15 calendar year of the transaction transferring the employing
16 enterprise or the date of the actual transfer of control and
17 operation of the employing enterprise;

18 (c) the successor shall notify the
19 division of the acquisition on or before the due date of the
20 successor's first wage and contribution report. If the
21 successor employer fails to notify the division of the
22 acquisition within this time limit, the division, when it
23 receives actual notice, shall effect the transfer of the
24 experience history and applicable rate of contribution
25 retroactively to the date of the acquisition, and the successor

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1 shall pay a penalty of fifty dollars (\$50.00); and

2 (d) where the transaction involves only
3 a merger, consolidation or other form of reorganization without
4 a substantial change in the ownership and controlling interest
5 of the business entity, as determined by the secretary, the
6 limitations on transfers stated in Subparagraphs (a), (b) and
7 (c) of this paragraph shall not apply. A party to a merger,
8 consolidation or other form of reorganization described in this
9 subparagraph shall not be relieved of liability for any
10 contributions, interest or penalties due and owing from the
11 employing enterprise at the time of the merger, consolidation
12 or other form of reorganization;

13 (3) the applicable experience history may be
14 transferred to the successor in the case of a partial transfer
15 of an employing enterprise if the successor has acquired one or
16 more of the several employing enterprises of a predecessor but
17 not all of the employing enterprises of the predecessor and
18 each employing enterprise so acquired was operated by the
19 predecessor as a separate store, factory, shop or other
20 separate employing enterprise and the predecessor, throughout
21 the entire period of the contribution with liability applicable
22 to each enterprise transferred, has maintained and preserved
23 payroll records that, together with records of contribution
24 liability and benefit chargeability, can be separated by the
25 parties from the enterprises retained by the predecessor to the

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1 satisfaction of the secretary or the secretary's delegate. A
2 partial experience history transfer will be made only if the
3 successor:

4 (a) notifies the division of the
5 acquisition, in writing, not later than the due date of the
6 successor's first quarterly wage and contribution report after
7 the effective date of the acquisition;

8 (b) files an application provided by the
9 division that contains the endorsement of the predecessor
10 within thirty days from the delivery or mailing of such
11 application by the division to the successor's last known
12 address; and

13 (c) files with the application a Form
14 ES-903A or its equivalent with a schedule of the name and
15 social security number of and the wages paid to and the
16 contributions paid for each employee for the three and one-half
17 year period preceding the computation date as defined in
18 Subparagraph (d) of Paragraph (3) of Subsection I of this
19 section through the date of transfer or such lesser period as
20 the enterprises transferred may have been in operation. The
21 application and Form ES-903A shall be supported by the
22 predecessor's permanent employment records, which shall be
23 available for audit by the division. The application and Form
24 ES-903A shall be reviewed by the division and, upon approval,
25 the percentage of the predecessor's experience history

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1 attributable to the enterprises transferred shall be
2 transferred to the successor. The percentage shall be obtained
3 by dividing the taxable payrolls of the transferred enterprises
4 for such three and one-half year period preceding the date of
5 computation or such lesser period as the enterprises
6 transferred may have been in operation by the predecessor's
7 entire payroll;

8 (4) if, at the time of a transfer of an
9 employing enterprise in whole or in part, both the predecessor
10 and the successor are under common ownership, then the
11 experience history attributable to the transferred business
12 shall also be transferred to and combined with the experience
13 history attributable to the successor employer. The rates of
14 both employers shall be recalculated and made effective
15 immediately upon the date of the transfer;

16 (5) whenever a person, who is not currently an
17 employer, acquires the trade or business of an employing
18 enterprise, the experience history of the acquired business
19 shall not be transferred to the successor if the secretary or
20 the secretary's designee finds that the successor acquired the
21 business solely or primarily for the purpose of obtaining a
22 lower rate of contributions. Instead, the successor shall be
23 assigned the applicable new employer rate pursuant to this
24 section. In determining whether the business was acquired
25 solely or primarily for the purpose of obtaining a lower rate

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1 of contribution, the secretary or the secretary's designee
2 shall consider:

3 (a) the cost of acquiring the business;

4 (b) whether the person continued the
5 business enterprise of the acquired business;

6 (c) how long such business enterprise
7 was continued; and

8 (d) whether a substantial number of new
9 employees were hired for performance of duties unrelated to
10 those that the business activity conducted prior to
11 acquisition;

12 (6) if, following a transfer of experience
13 history pursuant to this subsection, the department determines
14 that a substantial purpose of the transfer of the employing
15 enterprise was to obtain a reduced liability for contributions,
16 then the experience rating accounts of the employers involved
17 shall be combined into a single account and a single rate
18 assigned to the combined account;

19 (7) the secretary shall adopt such rules as
20 are necessary to interpret and carry out the provisions of this
21 subsection, including rules that:

22 (a) describe how experience history is
23 to be transferred; and

24 (b) establish procedures to identify the
25 type of transfer or acquisition of an employing enterprise; and

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1 (8) a person who knowingly violates or
2 attempts to violate a rule adopted pursuant to Paragraph (7) of
3 this subsection, who transfers or acquires, or attempts to
4 transfer or acquire, an employing enterprise for the sole or
5 primary purpose of obtaining a reduced liability for
6 contributions or who knowingly advises another person to
7 violate a rule adopted pursuant to Paragraph (7) of this
8 subsection or to transfer or acquire an employing enterprise
9 for the sole or primary purpose of obtaining a reduced
10 liability for contributions is guilty of a misdemeanor and
11 shall be punished by a fine of not less than one thousand five
12 hundred dollars (\$1,500) or more than three thousand dollars
13 (\$3,000) or, if an individual, by imprisonment for a definite
14 term not to exceed ninety days or both. In addition, such a
15 person shall be subject to the following civil penalty imposed
16 by the secretary:

17 (a) if the person is an employer, the
18 person shall be assigned the highest contribution rate
19 established by the provisions of this section for the calendar
20 year in which the violation occurs and the three subsequent
21 calendar years; provided that the highest rate is five and
22 four-tenths percent of annual payroll and, if the difference
23 between the increased penalty rate and the rate otherwise
24 applicable would be less than two percent of the employer's
25 payroll, the contribution rate shall be increased by two

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1 percent of the employer's payroll for the calendar year in
2 which the violation occurs and the three subsequent calendar
3 years; or

4 (b) if the person is not an employer,
5 the secretary may impose a civil penalty not to exceed three
6 thousand dollars (\$3,000).

7 I. For each calendar year, adjustments of
8 contribution rates below the standard or reduced rate and
9 measures designed to protect the fund are provided in
10 Paragraphs (1) through (4) of this subsection:

11 (1) the total assets in the fund and the total
12 of the last annual payrolls of all employers subject to
13 contributions as of the computation date for each year shall be
14 determined. These annual totals are here called "the fund" and
15 "total payrolls". For each year, the "reserve" of each
16 employer qualified under Subsection F of this section shall be
17 fixed by the excess of the employer's total contributions over
18 total benefit charges computed as a percentage of the
19 employer's average payroll reported for contributions. The
20 determination of each employer's annual rate, computed as of
21 the computation date for each calendar year, shall be made by
22 matching the employer's reserve as shown in the reserve column
23 with the corresponding rate in the rate column of the
24 applicable rate schedule of the table provided in Paragraph (4)
25 of this subsection, provided that the contribution rate shall

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1 not exceed five and four-tenths percent of annual payroll;

2 (2) except as otherwise provided, each
3 employer's rate for each calendar year commencing January 1,
4 1979 or thereafter shall be the corresponding rate in:

5 (a) Schedule 0 of the table provided in
6 Paragraph (4) of this subsection if the fund equals at least
7 three and seven-tenths percent of the total payrolls;

8 (b) Schedule 1 of the table provided in
9 Paragraph (4) of this subsection if the fund equals less than
10 three and seven-tenths percent and not less than three and
11 four-tenths percent of the total payrolls;

12 (c) Schedule 2 of the table provided in
13 Paragraph (4) of this subsection if the fund equals less than
14 three and four-tenths percent but not less than two and seven-
15 tenths percent of the total payrolls;

16 (d) Schedule 3 of the table provided in
17 Paragraph (4) of this subsection if the fund equals less than
18 two and seven-tenths percent and not less than two percent of
19 the total payrolls;

20 (e) Schedule 4 of the table provided in
21 Paragraph (4) of this subsection if the fund equals less than
22 two percent and not less than one and one-half percent of the
23 total payrolls;

24 (f) Schedule 5 of the table provided in
25 Paragraph (4) of this subsection if the fund equals less than

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1 one and one-half percent and not less than one percent of the
2 total payrolls; or

3 (g) Schedule 6 of the table provided in
4 Paragraph (4) of this subsection if the fund equals one percent
5 of the total payrolls;

6 (3) as used in this section:

7 (a) "annual payroll" means the total
8 amount of remuneration from an employer for employment during a
9 twelve-month period ending on a computation date, and "average
10 payroll" means the average of the last three annual payrolls;

11 (b) "base-period wages" means the wages
12 of an individual for insured work during the individual's base
13 period on the basis of which the individual's benefit rights
14 were determined;

15 (c) "base-period employers" means the
16 employers of an individual during the individual's base period;
17 and

18 (d) "computation date" for each calendar
19 year means the close of business on June 30 of the preceding
20 calendar year; and

21 (4) table of employer reserves and
22 contribution rate schedules:

23 Employer	Contribution	Contribution	Contribution	Contribution
24 Reserve	Schedule 0	Schedule 1	Schedule 2	Schedule 3
25 10.0% and over	0.03%	0.05%	0.1%	0.6%

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1	9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
2	8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
3	7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
4	6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5	5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
6	4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
7	3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
8	2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
9	1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
10	0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
11	(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
12	(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
13	(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
14	Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
15	Employer	Contribution	Contribution	Contribution	
16	Reserve	Schedule 4	Schedule 5	Schedule 6	
17	10.0% and over	0.9%	1.2%	2.7%	
18	9.0%-9.9%	1.2%	1.5%	2.7%	
19	8.0%-8.9%	1.5%	1.8%	2.7%	
20	7.0%-7.9%	1.8%	2.1%	2.7%	
21	6.0%-6.9%	2.1%	2.4%	2.7%	
22	5.0%-5.9%	2.4%	2.7%	3.0%	
23	4.0%-4.9%	2.7%	3.0%	3.3%	
24	3.0%-3.9%	3.0%	3.3%	3.6%	
25	2.0%-2.9%	3.3%	3.6%	3.9%	

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1	1.0%-1.9%	3.6%	3.9%	4.2%
2	0.9%-0.0%	3.9%	4.2%	4.5%
3	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
4	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
5	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
6	Under (-2.0%)	5.4%	5.4%	5.4%.

7 J. The division shall promptly notify each
8 employer of the employer's rate of contributions as determined
9 for any calendar year pursuant to this section, provided that
10 an employer's contribution rate shall not exceed five and
11 four-tenths percent of annual payroll. Such notification
12 shall include the amount determined as the employer's average
13 payroll, the total of all of the employer's contributions paid
14 on the employer's behalf and credited to the employer's
15 account for all past years and total benefits charged to the
16 employer's account for all such years. Such determination
17 shall become conclusive and binding upon the employer unless,
18 within thirty days after the mailing of notice thereof to the
19 employer's last known address or in the absence of mailing,
20 within thirty days after the delivery of such notice, the
21 employer files an application for review and redetermination,
22 setting forth the employer's reason therefor. The employer
23 shall be granted an opportunity for a fair hearing in
24 accordance with rules prescribed by the secretary, but an
25 employer shall not have standing, in any proceeding involving

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1 the employer's rate of contributions or contribution
2 liability, to contest the chargeability to the employer's
3 account of any benefits paid in accordance with a
4 determination, redetermination or decision pursuant to Section
5 51-1-8 NMSA 1978, except upon the ground that the services on
6 the basis of which such benefits were found to be chargeable
7 did not constitute services performed in employment for the
8 employer and only in the event that the employer was not a
9 party to such determination, redetermination or decision, or
10 to any other proceedings under the Unemployment Compensation
11 Law in which the character of such services was determined.
12 The employer shall be promptly notified of the decision on the
13 employer's application for redetermination, which shall become
14 final unless, within fifteen days after the mailing of notice
15 thereof to the employer's last known address or in the absence
16 of mailing, within fifteen days after the delivery of such
17 notice, further appeal is initiated pursuant to Subsection D
18 of Section 51-1-8 NMSA 1978.

19 K. The division shall provide each contributing
20 employer, within ninety days of the end of each calendar
21 quarter, a written determination of benefits chargeable to the
22 employer's account. Such determination shall become
23 conclusive and binding upon the employer for all purposes
24 unless, within thirty days after the mailing of the
25 determination to the employer's last known address or in the

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1 absence of mailing, within thirty days after the delivery of
2 such determination, the employer files an application for
3 review and redetermination, setting forth the employer's
4 reason therefor. The employer shall be granted an opportunity
5 for a fair hearing in accordance with rules prescribed by the
6 secretary, but an employer shall not have standing in any
7 proceeding involving the employer's contribution liability to
8 contest the chargeability to the employer's account of any
9 benefits paid in accordance with a determination,
10 redetermination or decision pursuant to Section 51-1-8 NMSA
11 1978, except upon the ground that the services on the basis of
12 which such benefits were found to be chargeable did not
13 constitute services performed in employment for the employer
14 and only in the event that the employer was not a party to
15 such determination, redetermination or decision, or to any
16 other proceedings under the Unemployment Compensation Law in
17 which the character of such services was determined. The
18 employer shall be promptly notified of the decision on the
19 employer's application for redetermination, which shall become
20 final unless, within fifteen days after the mailing of notice
21 thereof to the employer's last known address or in the absence
22 of mailing, within fifteen days after the delivery of such
23 notice, further appeal is initiated pursuant to Subsection D
24 of Section 51-1-8 NMSA 1978.

25 L. The contributions, together with interest and

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1 penalties thereon imposed by the Unemployment Compensation
2 Law, shall not be assessed nor shall action to collect the
3 same be commenced more than four years after a report showing
4 the amount of the contributions was due. In the case of a
5 false or fraudulent contribution report with intent to evade
6 contributions or a willful failure to file a report of all
7 contributions due, the contributions, together with interest
8 and penalties thereon, may be assessed or an action to collect
9 such contributions may be begun at any time. Before the
10 expiration of such period of limitation, the employer and the
11 secretary may agree in writing to an extension thereof and the
12 period so agreed on may be extended by subsequent agreements
13 in writing. In any case where the assessment has been made
14 and action to collect has been commenced within four years of
15 the due date of any contribution, interest or penalty,
16 including the filing of a warrant of lien by the secretary
17 pursuant to Section 51-1-36 NMSA 1978, such action shall not
18 be subject to any period of limitation.

19 M. The secretary shall correct any error in the
20 determination of an employer's rate of contribution during the
21 calendar year to which the erroneous rate applies,
22 notwithstanding that notification of the employer's rate of
23 contribution may have been issued and contributions paid
24 pursuant to the notification. Upon issuance by the division
25 of a corrected rate of contribution, the employer shall have

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1 the same rights to review and redetermination as provided in
2 Subsection J of this section.

3 N. Any interest required to be paid on advances to
4 this state's unemployment compensation fund under Title 12 of
5 the Social Security Act shall be paid in a timely manner as
6 required under Section 1202 of Title 12 of the Social Security
7 Act and shall not be paid, directly or indirectly, by the
8 state from amounts in the state's unemployment compensation
9 fund."

10 Section 2. Section 51-1-11 NMSA 1978 (being Laws 2003,
11 Chapter 47, Section 11) is repealed and a new Section 51-1-11
12 NMSA 1978 is enacted to read:

13 "51-1-11. [NEW MATERIAL] FUTURE RATES BASED ON BENEFIT
14 EXPERIENCE--CAP ESTABLISHED.--

15 A. The division shall maintain a separate account
16 for each contributing employer and shall credit the
17 contributing employer's account with all contributions paid by
18 that employer under the Unemployment Compensation Law.
19 Nothing in the Unemployment Compensation Law shall be
20 construed to grant an employer or individuals in the
21 employer's service prior claims or rights to the amounts paid
22 by the employer into the fund.

23 B. Benefits paid to an individual shall be charged
24 against the accounts of the individual's base-period employers
25 on a pro rata basis according to the proportion of the

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1 individual's total base-period wages received from each
2 employer, except that no benefits paid to a claimant as
3 extended benefits under the provisions of Section 51-1-48 NMSA
4 1978 shall be charged to the account of any base-period
5 employer who is not on a reimbursable basis and who is not a
6 governmental entity and, except as the secretary shall by rule
7 prescribe otherwise, in the case of benefits paid to an
8 individual who:

9 (1) left the employ of a base-period employer
10 who is not on a reimbursable basis voluntarily without good
11 cause in connection with the individual's employment;

12 (2) was discharged from the employment of a
13 base-period employer who is not on a reimbursable basis for
14 misconduct connected with the individual's employment;

15 (3) is employed part time by a base-period
16 employer who is not on a reimbursable basis and who continues
17 to furnish the individual the same part-time work while the
18 individual is separated from full-time work for a
19 nondisqualifying reason; or

20 (4) received benefits based upon wages earned
21 from a base-period employer who is not on a reimbursable basis
22 while attending approved training under the provisions of
23 Subsection E of Section 51-1-5 NMSA 1978.

24 C. The division shall not charge a contributing or
25 reimbursing base-period employer's account with any portion of

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1 benefit amounts that the division can bill to or recover from
2 the federal government as either regular or extended benefits.

3 D. All contributions to the fund shall be pooled
4 and available to pay benefits to any individual entitled
5 thereto, irrespective of the source of such contributions. The
6 standard rate of contributions payable by each employer shall
7 be five and four-tenths percent and no employer contribution
8 above that rate shall be charged.

9 E. An employer's rate shall not be varied from the
10 standard rate for any calendar year, unless, as of the
11 computation date for that year, the employer's account has been
12 chargeable with benefits throughout the preceding thirty-six
13 months, except that:

14 (1) the provisions of this subsection shall
15 not apply to governmental entities;

16 (2) subsequent to December 31, 1984, any
17 employing unit that becomes an employer subject to the payment
18 of contributions under the Unemployment Compensation Law or has
19 been an employer subject to the payment of contributions at a
20 standard rate of two and seven-tenths percent through December
21 31, 1984 shall be subject to the payment of contributions at
22 the reduced rate of two and seven-tenths percent until, as of
23 the computation date of a particular year, the employer's
24 account has been chargeable with benefits throughout the
25 preceding thirty-six months; and

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1 (3) any individual, type of organization or
2 employing unit that acquires all or part of the trade or
3 business of another employing unit, pursuant to Paragraphs (2)
4 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
5 a reduced rate of contribution shall be entitled to the
6 transfer of the reduced rate to the extent permitted under
7 Subsection G of this section.

8 F. The secretary shall, for the year 1942 and for
9 each calendar year thereafter, classify employers in accordance
10 with their actual experience in the payment of contributions
11 and with respect to benefits charged against their accounts,
12 with a view of fixing such contribution rates as will reflect
13 such benefit experience. An employer's rate for any calendar
14 year shall be determined on the basis of the employer's record
15 and the condition of the fund as of the computation date for
16 such calendar year, provided that an employer's contribution
17 rate shall not exceed five and four-tenths percent of annual
18 payroll.

19 An employer may make voluntary payments in addition to the
20 contributions required under the Unemployment Compensation Law,
21 which shall be credited to the employer's account in accordance
22 with department rule. The voluntary payments shall be included
23 in the employer's account as of the employer's most recent
24 computation date if they are made on or before the following
25 March 1. Voluntary payments when accepted from an employer

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1 shall not be refunded in whole or in part.

2 G. In the case of a transfer of an employing
3 enterprise, the experience history of the transferred
4 enterprise as provided in Subsection F of this section shall be
5 transferred from the predecessor employer to the successor
6 under the following conditions and in accordance with the
7 applicable rules of the secretary:

8 (1) Definitions:

9 (a) "employing enterprise" is a business
10 activity engaged in by a contributing employing unit in which
11 one or more persons have been employed within the current or
12 the three preceding calendar quarters;

13 (b) "predecessor" means the owner and
14 operator of an employing enterprise immediately prior to the
15 transfer of such enterprise;

16 (c) "successor" means any individual or
17 any type of organization that acquires an employing enterprise
18 and continues to operate such business entity; and

19 (d) "experience history" means the
20 experience rating record and reserve account, including the
21 actual contributions, benefit charges and payroll experience of
22 the employing enterprise.

23 (2) For the purpose of this section, two or
24 more employers who are parties to or the subject of any
25 transaction involving the transfer of an employing enterprise

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1 shall be deemed to be a single employer and the experience
2 history of the employing enterprise shall be transferred to the
3 successor employer if the successor employer has acquired by
4 the transaction all of the business enterprises of the
5 predecessor; provided that:

6 (a) all contributions, interest and
7 penalties due from the predecessor employer have been paid;

8 (b) notice of the transfer has been
9 given in accordance with the rules of the secretary within four
10 years of the transaction transferring the employing enterprise
11 or the date of the actual transfer of control and operation of
12 the employing enterprise;

13 (c) in the case of the transfer of an
14 employing enterprise, the successor employer must notify the
15 division of the acquisition on or before the due date of the
16 successor employer's first wage and contribution report. If
17 the successor employer fails to notify the division of the
18 acquisition within this time limit, the division, when it
19 receives actual notice, shall effect the transfer of the
20 experience history and applicable rate of contribution
21 retroactively to the date of the acquisition, and the successor
22 shall pay a penalty of fifty dollars (\$50.00); and

23 (d) where the transaction involves only
24 a merger, consolidation or other form of reorganization without
25 a substantial change in the ownership and controlling interest

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1 of the business entity, as determined by the secretary, the
2 limitations on transfers stated in Subparagraphs (a), (b) and
3 (c) of this paragraph shall not apply. A party to a merger,
4 consolidation or other form of reorganization described in this
5 paragraph shall not be relieved of liability for any
6 contributions, interest or penalties due and owing from the
7 employing enterprise at the time of the merger, consolidation
8 or other form of reorganization.

9 (3) The applicable experience history may be
10 transferred to the successor in the case of a partial transfer
11 of an employing enterprise if the successor has acquired one or
12 more of the several employing enterprises of a predecessor but
13 not all of the employing enterprises of the predecessor and
14 each employing enterprise so acquired was operated by the
15 predecessor as a separate store, factory, shop or other
16 separate employing enterprise and the predecessor, throughout
17 the entire period of the contribution with liability applicable
18 to each enterprise transferred, has maintained and preserved
19 payroll records that, together with records of contribution
20 liability and benefit chargeability, can be separated by the
21 parties from the enterprises retained by the predecessor to the
22 satisfaction of the secretary or the secretary's delegate. A
23 partial experience history transfer will be made only if:

24 (a) the successor notifies the division
25 of the acquisition, in writing, not later than the due date of

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1 the successor's first quarterly wage and contribution report
2 after the effective date of the acquisition;

3 (b) the successor files an application
4 provided by the division that contains the endorsement of the
5 predecessor within thirty days from the delivery or mailing of
6 such application by the division to the successor's last known
7 address; and

8 (c) the successor files with the
9 application a Form ES-903A or its equivalent with a schedule of
10 the name and social security number of and the wages paid to
11 and the contributions paid for each employee for the three and
12 one-half year period preceding the computation date as defined
13 in Subparagraph (d) of Paragraph (3) of Subsection H of this
14 section through the date of transfer or such lesser period as
15 the enterprises transferred may have been in operation. The
16 application and Form ES-903A shall be supported by the
17 predecessor's permanent employment records, which shall be
18 available for audit by the division. The application and Form
19 ES-903A shall be reviewed by the division and, upon approval,
20 the percentage of the predecessor's experience history
21 attributable to the enterprises transferred shall be
22 transferred to the successor. The percentage shall be obtained
23 by dividing the taxable payrolls of the transferred enterprises
24 for such three and one-half year period preceding the date of
25 computation or such lesser period as the enterprises

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1 transferred may have been in operation by the predecessor's
2 entire payroll.

3 H. For each calendar year, adjustments of
4 contribution rates below the standard or reduced rate and
5 measures designed to protect the fund are provided in
6 Paragraphs (1) through (4) of this subsection.

7 (1) The total assets in the fund and the total
8 of the last annual payrolls of all employers subject to
9 contributions as of the computation date for each year shall be
10 determined. These annual totals are here called "the fund" and
11 "total payrolls". For each year, the "reserve" of each
12 employer qualified under Subsection E of this section shall be
13 fixed by the excess of the employer's total contributions over
14 total benefit charges computed as a percentage of the
15 employer's average payroll reported for contributions. The
16 determination of each employer's annual rate, computed as of
17 the computation date for each calendar year, shall be made by
18 matching the employer's reserve as shown in the reserve column
19 with the corresponding rate in the rate column of the
20 applicable rate schedule of the table provided in Paragraph (4)
21 of this subsection, provided that the contribution rate shall
22 not exceed five and four-tenths percent of annual payroll.

23 (2) Each employer's rate for each calendar
24 year commencing January 1, 1979 or thereafter shall be:

25 (a) the corresponding rate in Schedule 1

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1 of the table provided in Paragraph (4) of this subsection if
2 the fund equals at least three and four-tenths percent of the
3 total payrolls;

4 (b) the corresponding rate in Schedule 2
5 of the table provided in Paragraph (4) of this subsection if
6 the fund has dropped to less than three and four-tenths percent
7 and not less than two and seven-tenths percent of the total
8 payrolls;

9 (c) the corresponding rate in Schedule 3
10 of the table provided in Paragraph (4) of this subsection if
11 the fund has dropped to less than two and seven-tenths percent
12 and not less than two percent of the total payrolls;

13 (d) the corresponding rate in Schedule 4
14 of the table provided in Paragraph (4) of this subsection if
15 the fund has dropped to less than two percent and not less than
16 one and one-half percent of the total payrolls;

17 (e) the corresponding rate in Schedule 5
18 of the table provided in Paragraph (4) of this subsection if
19 the fund has dropped to less than one and one-half percent and
20 not less than one percent of the total payrolls; or

21 (f) the corresponding rate in Schedule 6
22 of the table provided in Paragraph (4) of this subsection if
23 the fund has dropped less than one percent of the total
24 payrolls.

25 (3) As used in this section:

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1 (a) "annual payroll" means the total
2 amount of remuneration from an employer for employment during a
3 twelve-month period ending on a computation date, and "average
4 payroll" means the average of the last three annual payrolls;

5 (b) "base-period wages" means the wages
6 of an individual for insured work during the individual's base
7 period on the basis of which the individual's benefit rights
8 were determined;

9 (c) "base-period employers" means the
10 employers of an individual during the individual's base period;
11 and

12 (d) "computation date" for each calendar
13 year means the close of business on June 30 of the preceding
14 calendar year.

15 (4) Table of employer reserves and
16 contribution rate schedules:

17 Employer	Contribution	Contribution	Contribution
18 Reserve	Schedule 1	Schedule 2	Schedule 3
19 10.0% and over	0.05%	0.1%	0.6%
20 9.0%-9.9%	0.1%	0.2%	0.9%
21 8.0%-8.9%	0.2%	0.4%	1.2%
22 7.0%-7.9%	0.4%	0.6%	1.5%
23 6.0%-6.9%	0.6%	0.8%	1.8%
24 5.0%-5.9%	0.8%	1.1%	2.1%
25 4.0%-4.9%	1.1%	1.4%	2.4%

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1	3.0%-3.9%	1.4%	1.7%	2.7%
2	2.0%-2.9%	1.7%	2.0%	3.0%
3	1.0%-1.9%	2.0%	2.4%	3.3%
4	0.9%-0.0%	2.4%	3.3%	3.6%
5	(-0.1%)-(-0.5%)	3.3%	3.6%	3.9%
6	(-0.5%)-(-1.0%)	4.2%	4.2%	4.2%
7	(-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
8	Under (-2.0%)	5.4%	5.4%	5.4%
9	Employer	Contribution	Contribution	Contribution
10	Reserve	Schedule 4	Schedule 5	Schedule 6
11	10.0% and over	0.9%	1.2%	2.7%
12	9.0%-9.9%	1.2%	1.5%	2.7%
13	8.0%-8.9%	1.5%	1.8%	2.7%
14	7.0%-7.9%	1.8%	2.1%	2.7%
15	6.0%-6.9%	2.1%	2.4%	2.7%
16	5.0%-5.9%	2.4%	2.7%	3.0%
17	4.0%-4.9%	2.7%	3.0%	3.3%
18	3.0%-3.9%	3.0%	3.3%	3.6%
19	2.0%-2.9%	3.3%	3.6%	3.9%
20	1.0%-1.9%	3.6%	3.9%	4.2%
21	0.9%-0.0%	3.9%	4.2%	4.5%
22	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
23	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
24	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
25	Under (-2.0%)	5.4%	5.4%	5.4%.

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1 I. The division shall promptly notify each employer
2 of the employer's rate of contributions as determined for any
3 calendar year pursuant to this section, provided that an
4 employee's contribution rate shall not exceed five and four-
5 tenths percent of annual payroll. Such notification shall
6 include the amount determined as the employer's average
7 payroll, the total of all of the employer's contributions paid
8 on the employer's behalf and credited to the employer's account
9 for all past years and total benefits charged to the employer's
10 account for all such years. Such determination shall become
11 conclusive and binding upon the employer unless, within thirty
12 days after the mailing of notice thereof to the employer's last
13 known address or in the absence of mailing, within thirty days
14 after the delivery of such notice, the employer files an
15 application for review and redetermination, setting forth the
16 employer's reason therefor. The employer shall be granted an
17 opportunity for a fair hearing in accordance with rules
18 prescribed by the secretary, but an employer shall not have
19 standing, in any proceeding involving the employer's rate of
20 contributions or contribution liability, to contest the
21 chargeability to the employer's account of any benefits paid in
22 accordance with a determination, redetermination or decision
23 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
24 that the services on the basis of which such benefits were
25 found to be chargeable did not constitute services performed in

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1 employment for the employer and only in the event that the
2 employer was not a party to such determination, redetermination
3 or decision, or to any other proceedings under the Unemployment
4 Compensation Law in which the character of such services was
5 determined. The employer shall be promptly notified of the
6 decision on the employer's application for redetermination,
7 which shall become final unless, within fifteen days after the
8 mailing of notice thereof to the employer's last known address
9 or in the absence of mailing, within fifteen days after the
10 delivery of such notice, further appeal is initiated pursuant
11 to Subsection D of Section 51-1-8 NMSA 1978.

12 J. The division shall provide each contributing
13 employer, within ninety days of the end of each calendar
14 quarter, a written determination of benefits chargeable to the
15 employer's account. Such determination shall become conclusive
16 and binding upon the employer for all purposes unless, within
17 thirty days after the mailing of the determination to the
18 employer's last known address or in the absence of mailing,
19 within thirty days after the delivery of such determination,
20 the employer files an application for review and
21 redetermination, setting forth the employer's reason therefor.
22 The employer shall be granted an opportunity for a fair hearing
23 in accordance with rules prescribed by the secretary, but an
24 employer shall not have standing in any proceeding involving
25 the employer's contribution liability to contest the

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1 chargeability to the employer's account of any benefits paid in
2 accordance with a determination, redetermination or decision
3 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
4 that the services on the basis of which such benefits were
5 found to be chargeable did not constitute services performed in
6 employment for the employer and only in the event that the
7 employer was not a party to such determination, redetermination
8 or decision, or to any other proceedings under the Unemployment
9 Compensation Law in which the character of such services was
10 determined. The employer shall be promptly notified of the
11 decision on the employer's application for redetermination,
12 which shall become final unless, within fifteen days after the
13 mailing of notice thereof to the employer's last known address
14 or in the absence of mailing, within fifteen days after the
15 delivery of such notice, further appeal is initiated pursuant
16 to Subsection D of Section 51-1-8 NMSA 1978.

17 K. The contributions, together with interest and
18 penalties thereon imposed by the Unemployment Compensation Law,
19 shall not be assessed nor shall action to collect the same be
20 commenced more than four years after a report showing the
21 amount of the contributions was due. In the case of a false or
22 fraudulent contribution report with intent to evade
23 contributions or a willful failure to file a report of all
24 contributions due, the contributions, together with interest
25 and penalties thereon, may be assessed or an action to collect

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1 such contributions may be begun at any time. Before the
2 expiration of such period of limitation, the employer and the
3 secretary may agree in writing to an extension thereof and the
4 period so agreed on may be extended by subsequent agreements in
5 writing. In any case where the assessment has been made and
6 action to collect has been commenced within four years of the
7 due date of any contribution, interest or penalty, including
8 the filing of a warrant of lien by the secretary pursuant to
9 Section 51-1-36 NMSA 1978, such action shall not be subject to
10 any period of limitation.

11 L. The secretary shall correct any error in the
12 determination of an employer's rate of contribution during the
13 calendar year to which the erroneous rate applies,
14 notwithstanding that notification of the employer's rate of
15 contribution may have been issued and contributions paid
16 pursuant to the notification. Upon issuance by the division of
17 a corrected rate of contribution, the employer shall have the
18 same rights to review and redetermination as provided in
19 Subsection I of this section.

20 M. Any interest required to be paid on advances to
21 this state's unemployment compensation fund under Title 12 of
22 the Social Security Act shall be paid in a timely manner as
23 required under Section 1202 of Title 12 of the Social Security
24 Act and shall not be paid, directly or indirectly, by the state
25 from amounts in the state's unemployment compensation fund."

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1 Section 3. EFFECTIVE DATE.--The effective date of the
2 provisions of Section 2 of this act is the earliest of the
3 following:

4 A. January 1, 2008; or

5 B. the January 1 following certification to the
6 governor by the secretary of labor that the unemployment
7 compensation fund is less than two and one-half percent of
8 total payrolls pursuant to the computation provided in
9 Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

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